IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.771 OF 2004
IN
NOTICE OF MOTION NO.3096 OF 2004
IN
S.C. SUIT NO.2662 OF 2004

Gulab Jamal Shaikh).. Appellant (Org.Plaintiff)

Versus

Mrs.Shantaben A.Mistry and another).. Respondents (Org.Defendants)

Mr.R.G.Ketkar with Ms.Rutuja Ambekar for the Appellant.

Mr.S.R.Mishtra for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 22ND NOVEMBER 2004

P.C.:

. The trial Court has dismissed the Notice of Motion taken out by the Plaintiff who had filed the Suit for injunction against the Defendants. The Plaintiff claims to be the landlord of the premises which were let out to Ambalal Hargovindas Mistry who was the husband of the first Defendant and father of the second Defendant. The Plaintiff relies on a Deed of Surrender of Tenancy Rights under which it is claimed that Ambalal Mistry had agreed that the landlord i.e. the Plaintiff was entitled to recover possession of the suit shop on the death of the tenant and that his heirs were not entitled to

continue as tenants. This document is notarised by Mr.M.V.Shinde. An order was passed on 17th September 2004 by this Court directing Mr.Shinde to produce the register maintained by him and other documents for inspection by this Court. Despite several opportunities given to Mr.Shinde, he has not produced the register on record. At this stage it is not possible to accept the version of the Defendants that this Deed of Surrender of Tenancy Rights and to arrive at the conclusion that the document is fabricated. However, the tenor of the Deed does leave room for doubt as to the genuineness of this Deed under which the tenant had agreed that his tenancy would be surrendered on his death and that his heirs would not continue as tenants as a matter of right.

2. Prima facie it does appear that the document on which reliance is placed by the Plaintiff is not genuine. Therefore, in my view, the Plaintiff will not be entitled to get possession of the suit premises at this stage. I see no reason to disturb the findings of the trial Court. The Defendants who are in possession will obviously continue to be in possession and pay rent to the landlord the Plaintiff herein.

3. Appeal From Order disposed of accordingly.

4. In view of the Appeal From Order being disposed

of, nothing survives in Civil Application No.1040 of 2004 and the same is disposed of accordingly.

5. The original Deed of Surrender of Tenancy Rights which has been produced in this Court under a sealed cover shall be transmitted to the trial Court immediately. The trial Court while deciding the Suit will consider the genuineness of this document.